

***United States Court of Appeals
for the Second Circuit***



**BRIEF FOR
APPELLEE**

77-1053

5-4-77

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT

Index No. 76 Civ. 1791

METROPOLITAN LIFE INSURANCE CO.,

Plaintiff,

- against -

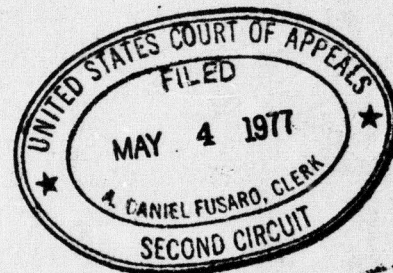
EDWARD MANNING and THOMAS GAINES, JR.,

Appellee

Appellant

Defendants

APPELLEE'S BRIEF



To Be Argued By:

Steve Cohn, Esq.

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT

-----x
METROPOLITAN LIFE INSURANCE CO.,

Plaintiff,

Index No.

- against -

Div. 1791

EDWARD MANNING and THOMAS GAINES, JR.,

Appellee

Appellant

Defendants
-----x

BRIEF ON BEHALF OF
DEFENDANT-APPELLEE
EDWARD MANNING

PRELIMINARY STATEMENT

Since all matters of fact and law pertinent to this appeal are fully set forth in the report of United States Magistrate, the Hon. Harold J. Raby, which report was adopted by the Hon. Charles H. Tenney, United States District Court Judge in ordering that judgment be entered in favor of Edward Manning the defendant-appellee in this proceeding, we beg leave of the Court to refer to said Magistrate's opinion and use same as the basis of our brief.

POINT I

MANNING DE-FACTO
HUSBAND

The appellant has filed no formal brief, but has submitted three separate appendix.

The first appendix is labeled "Legal Husband", in which he indicated that the parties were never legally divorced. The Magistrate spent a great part of his decision on the point and held that Edward Manning, as a result of a loving and lasting relationship with the deceased was to be considered the de facto husband. Thomas L. Gaines had not communicated, as shown in testimony, for nearly 25 years with the deceased. Therefore, it is respectfully suggested that there is sufficient justification for Mr. Manning to be considered the de facto husband of the deceased.

* See Defendant Manning's Exhibit 8 photostatic copy attached hereto.

POINT I I

INTENT OF DECEDENT
IS BINDING

The purpose of this hearing was to determine to whom the proceeds of the Metropolitan Life Insurance Policy were to be distributed. The Magistrate set forth the controlling statutes and throughout the actions of the decedent, she gave sufficient indications that the proceeds be distributed to Edward Manning.

POINT III

ANY ACCUSATIONS OF FALSE
TESTIMONY IS NOT RELEVANT
AND REFUTED BY THE MINUTES
OF THE HEARING

The accusations that Edward Manning lied under oath is refuted by the testimony of Ruth Green (Page 49 through 51) and Edward Manning (Page 118 through 121). Furthermore, the decision of the Magistrate was based on all the facts brought forth before him and the matter referred to by Mr. Gaines in appendix 3 was considered by the Magistrate and is not deemed relevant to the basis of his decision.

CONCLUSION

Based upon all the facts elicited at the hearing and as a matter of law and equity, the decision of the United States District Court should be affirmed in all respects with costs to the Defendant Appellee.

Respectfully submitted,

DEAN and FALANGA
Attorneys for Appellee



Address:
DIRECTOR, NEW YORK REGION
U.S. CIVIL SERVICE COMMISSION
FEDERAL BUILDING, 35 FEDERAL PLAZA
NEW YORK, N.Y. 10007

UNITED STATES CIVIL SERVICE COMMISSION

NEW YORK REGION

COMPRISING THE STATES OF NEW YORK AND NEW JERSEY
OFFICE OF THE DIRECTOR, NEW YORK, N.Y. 10007

IN REPLY PLEASE REFER TO

AUG 12 1976

NY:AD:MFD:lab
YOUR REFERENCE

Mr. John P. Flaherty
Dean and Falanga
One Old Country Road
Carle Place, New York 11514

*Left Manning Exh 8
9/3/76 BW*

Dear Mr. Flaherty:

This is in reference to a court order issued by United States Magistrate Harold J. Raby on July 22, 1976 in the matter of Metropolitan Life Insurance Company v. Edward Manning and Thomas Gaines, Jr. 76 Civ. 1791 (CHT), S.D.N.Y.

Enclosed are copies of documents from Mrs. Irene Manning's personnel folder which state the name of her spouse.

Sincerely yours,

Virginia M. Armstrong
Virginia M. Armstrong
Regional Director

cc: Honorable Harold J. Raby

DATA FOR NONSENSITIVE OR NONCRITICAL-SENSITIVE POSITION

IMPORTANT Particular care must be used in completing the items numbered 1 through 9. READ THE INSTRUCTIONS ON THE BACK OF THIS FORM BEFORE ANSWERING ANY OF THESE ITEMS.		1. A. FULL NAME (LAST, FIRST, MIDDLE) MANNING IRINE NNN																					
		B. OTHER NAMES USED NICK: PENE																					
2. ARMED SERVICES SERIAL NO., AND DATES AND BRANCH OF SERVICE none		3. SOCIAL SECURITY NO. 070 20 8250	4. DATE AND PLACE (CITY, STATE) OF BIRTH 8/22/17 Warrenton, Va																				
7. DATES & PLACES OF RESIDENCE From (Mo./Yr.) To (Mo./Yr.)		6. AGENCY NAME AND ADDRESS VA Hospital West Haven, Conn																					
<table border="1"> <tr> <td>1966</td> <td>Present</td> <td>157 Lydia St.</td> <td>West Haven, Conn</td> </tr> <tr> <td>1941</td> <td>1966</td> <td>64 Bush Court</td> <td>Stratford, Conn</td> </tr> <tr> <td>1937</td> <td>1941</td> <td>136 W. 111 th St.</td> <td>New York City, N.Y.</td> </tr> </table>		1966	Present	157 Lydia St.	West Haven, Conn	1941	1966	64 Bush Court	Stratford, Conn	1937	1941	136 W. 111 th St.	New York City, N.Y.	<table border="1"> <tr> <td>No. and Street Address</td> <td>City and State</td> <td>ZIP Code</td> </tr> </table>		No. and Street Address	City and State	ZIP Code					
1966	Present	157 Lydia St.	West Haven, Conn																				
1941	1966	64 Bush Court	Stratford, Conn																				
1937	1941	136 W. 111 th St.	New York City, N.Y.																				
No. and Street Address	City and State	ZIP Code																					
8. DATE OF THIS REQUEST 4/15/68		9. (CHECK ONE) ☒ NONSENSITIVE ☐ NONCRITICAL-SENSITIVE																					
10. (CHECK ONE) 11. IF MARRIED, WIDOWED, OR DIVORCED, GIVE FULL NAME AND DATE AND PLACE OF BIRTH OF SPOUSE OR FORMER SPOUSE. INCLUDE WIFE'S MAIDEN NAME, GIVE DATE AND PLACE OF MARRIAGE OR DIVORCE. (GIVE SAME INFORMATION REGARDING ALL PREVIOUS MARRIAGES AND DIVORCES.)																							
☐ SINGLE ☒ MARRIED Edward Manning: DOB: 8/15/22 Place of Birth: Florence, S.C. ☐ WIDOW(ER) Married: ? Bethesda, Md and ☐ DIVORCED																							
12. IDENTIFYING NUMBERS (OTHER THAN SOCIAL SECURITY OR ARMED SERVICES SERIAL, SUCH AS PASSPORT NO., ALIEN REGISTRATION NO., SEAMAN'S CERTIFICATE OF IDENTIFICATION, ETC. GIVE ALL, SPECIFYING WHICH.) none																							
13. ORGANIZATIONS WITH WHICH AFFILIATED, PAST AND PRESENT, OTHER THAN RELIGIOUS OR POLITICAL ORGANIZATIONS OR THOSE WHICH SHOW RELIGIOUS OR POLITICAL AFFILIATIONS (IF NONE, SO STATE). none																							
14. DATES, NAMES AND ADDRESSES OF EMPLOYERS (BEGIN WITH PRESENT AND GO BACK TO JANUARY 1, 1937. CONTINUE UNDER ITEM 21 ON OTHER SIDE IF NECESSARY.)																							
<table border="1"> <tr> <td>From (Mo./Yr.)</td> <td>To (Mo./Yr.)</td> <td>Employer</td> <td>No., Street, City, State</td> <td>ZIP Code</td> </tr> <tr> <td>1/67</td> <td>10/67</td> <td>Yale N.H. Hospital</td> <td>New Haven, Conn</td> <td></td> </tr> <tr> <td>1965</td> <td>1965</td> <td>Metal Products</td> <td>Barnum Ave., Bridgeport, Conn</td> <td></td> </tr> <tr> <td>1965</td> <td>1965</td> <td>Stratford Motor Inn</td> <td>Stratford, Conn</td> <td></td> </tr> </table>				From (Mo./Yr.)	To (Mo./Yr.)	Employer	No., Street, City, State	ZIP Code	1/67	10/67	Yale N.H. Hospital	New Haven, Conn		1965	1965	Metal Products	Barnum Ave., Bridgeport, Conn		1965	1965	Stratford Motor Inn	Stratford, Conn	
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1965	1965	Stratford Motor Inn	Stratford, Conn																				
CERTIFICATION I CERTIFY THAT THE ABOVE STATEMENTS ARE TRUE, COMPLETE, AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF, AND FALSE STATEMENT ON THIS FORM IS PUNISHABLE BY LAW.		4/15/68 <i>Irene Manning</i> SIGNATURE (SIGN ORIGINAL AND FURNISH COPIES)																					
15. DATE OF APPOINTMENT 4/6/68		16. PLACE OF DUTY (IF DIFFERENT FROM ADDRESS IN ITEM 6)																					
17. TYPE OF APPOINTMENT ☐ EXCEPTED ☒ COMPETITIVE		18. CIVIL SERVICE REGULATION NUMBER OR OTHER APPOINTMENT AUTHORITY Reg. 315.301																					
19. THIS SPACE FOR FBI USE (SEE ALSO ITEM 22)		20. NAME AND FULL MAILING ADDRESS OF AGENCY OFFICIAL TO WHOM RESULTS OF INVESTIGATION SHOULD BE SENT. INCLUDE ZIP CODE. DAVID ANTON, Hospital Director Security Officer Veterans Administration Hospital West Haven, Connecticut																					

HEALTH QUALIFICATION PLACEMENT RECORD

1. LAST NAME—FIRST NAME—MIDDLE NAME MANNING, IRINE Mrs.		2. GRADE AND COMPONENT OR POSITION		3. SOCIAL SECURITY OR OTHER IDENTIF. NO. 003-2832004	
4. HOME ADDRESS (Number, street or RFD, city or town, State and ZIP code) 157 Lydia St., West Haven, Ct.		5. PURPOSE OF EXAMINATION		04-03-68	
7. SEX F	8. 2	9. TOTAL YEARS GOVERNMENT SERVICE MILITARY 0 CIVILIAN 0		10. AGENCY	11. ORGANIZATION UNIT
12. DATE OF BIRTH 08-22-18	13. PLACE OF BIRTH Warren, Va.		14. NAME, RELATIONSHIP, AND ADDRESS OF NEXT OF KIN Edward Manning (Husband) Same address		

TO BE COMPLETED BY APPOINTING OFFICER: Items 15 and 16

(A) BRIEF OUTLINE OF WHAT WORKER DOES For the physician's use, set down in brief and simple terms what the employee does on this job, including environmental details such as stairs to climb, distance to restroom facilities, cafeteria, work-shift, etc. (Use Section 15 below.)	(B) PHYSICAL DEMANDS OF THE POSITION In Item 15 below encircle the number of those factors which are essential to the duties of the position for which this applicant is being considered. The blank spaces may be used for special factors not listed.
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15. TITLE OF POSITION AND OUTLINE OF WHAT WORKER DOES IN THIS POSITION (Adapt use of Dictionary of Occupational Titles as guide, as applicable)

TO BE COMPLETED BY EXAMINING PHYSICIAN: Items 16 through 22

INSTRUCTIONS: The items circled below indicate the physical requirements of the position for which this individual is being considered. Indicate the individual's physical capacities for this position by placing an X in the appropriate column opposite the numbers encircled. If the individual has any other physical limitations relating to physical requirements not encircled or not covered by this form, indicate these under "Remarks" on the reverse side. Whenever PARTIAL capacity has been indicated, explain under "Remarks," giving specific quantities.

16. PHYSICAL REQUIREMENTS							
ENVIRONMENTAL FACTORS				CAPACITY			
	CAPACITY				CAPACITY		
	FULL	PARTIAL	NONE		FULL	PARTIAL	NONE
1. OUTSIDE				18. WORKING AROUND MACHINERY WITH MOVING PARTS			
2. OUTSIDE AND INSIDE	/			19. MOVING OBJECTS OR VEHICLES	/		
3. EXCESSIVE HEAT				20. WORKING ON LADDERS OR SCAFFOLDING	/		
4. EXCESSIVE COLD				21. WORKING BELOW GROUND			
5. EXCESSIVE HUMIDITY				22. UNUSUAL FATIGUE FACTORS (Specify)			
6. EXCESSIVE DAMPNESS OR CHILLING	/			23. WORKING WITH HANDS IN WATER	/		
7. DRY ATMOSPHERIC CONDITIONS				24. EXPLOSIVES			
8. EXCESSIVE NOISE, INTERMITTENT				25. VIBRATION			
9. CONSTANT NOISE				26. WORKING CLOSELY WITH OTHERS	/		
10. DUST	/			27. WORKS ALONE			
11. SILICA, ASBESTOS, ETC.				28. PROTRACTED OR IRREGULAR HOURS OF WORK			
12. FUMES, SMOKE, OR GASES				29. SPECIAL FACTORS (Specify)			
13. SOLVENTS (Degreasing agents)				Must be able to work in	/		
14. GREASES AND OILS				30. M. TB. Psychiatric wards			
15. RADIANT ENERGY				31.			
16. ELECTRICAL ENERGY				32.			
17. SLIPPERY OR UN-EVEN WALKING SURFACES	/						

PHYSICAL REQUIREMENTS (Continued)

FUNCTIONAL FACTORS

	CAPACITY				CAPACITY		
	FULL	PARTIAL	NONE		FULL	PARTIAL	NONE
33. HEAVY LIFTING, 45 POUNDS AND OVER				54. ABILITY FOR RAPID MENTAL AND MUSCULAR COORDINATION SIMULTANEOUSLY			
34. MODERATE LIFTING, 15-44 POUNDS	/			55. ABILITY TO USE AND DESIRABILITY OF USING FIREARMS			
35. LIGHT LIFTING, UNDER 15 POUNDS				56. HEAR VISION CORRECTABLE AT 13 TO 16 INCHES TO			
36. HEAVY CARRYING, 45 POUNDS AND OVER				57. FAR VISION CORRECTABLE TO 20/20 TO 20/40			
37. MODERATE CARRYING, 15-44 POUNDS	/			58. FAR VISION CORRECTABLE TO 20/20 TO 20/100			
38. LIGHT CARRYING, UNDER 15 POUNDS				59. SPECIFIC VISUAL REQUIREMENT (Specify)			
39. STRAIGHT PULLING (HOURS)	/			60. BOTH EYES REQUIRED			
40. PULLING, HAND OVER HAND (HOURS)	/			61. DEPTH PERCEPTION			
41. PUSHING (HOURS)	/			62. ABILITY TO DISTINGUISH BASIC COLORS			
42. REACHING ABOVE SHOULDER	/			63. ABILITY TO DISTINGUISH SHADES OF COLORS			
43. USE OF FINGERS	/			64. HEARING (aid permitted)			
44. BOTH HANDS REQUIRED	/			65. HEARING WITHOUT AID			
45. WALKING (HOURS)	/			66. SPECIFIC HEARING REQUIREMENTS (Specify)			
46. STANDING (HOURS)	/			67.			
47. CRAWLING (HOURS)				68.			
48. KNEELING (HOURS)	/			69.			
49. REPEATED BENDING (HOURS)				70.			
50. CLIMBING, LEGS ONLY (HOURS)	/						
51. CLIMBING, USE OF LEGS AND ARMS	/						
52. BOTH LEGS REQUIRED	/						
53. OPERATION OF CRANE, TRUCK, TUG, TRACTOR, OR MOTOR VEHICLE							

17. THIS PERSON SHOULD USE: (A) PROPERLY FITTED EYEGLASSES ☐ (B) PROPERLY FITTED HEARING AID ☐

(C) OTHER PROSTHETIC AID (Specify) ☐

18. REMARKS AND RECOMMENDATIONS:

Employable

19. ☐ PHYSICAL HANDICAP CODE

20. SIGNATURE OF PHYSICIAN OR EXAMINER

NAME TYPED OR PRINTED

DATE

21. ADDRESS OF EXAMINING PHYSICIAN (Typed or printed)

22. DO YOU HAVE FEDERAL DESIGNATION? YES ☒ NO ☐
IF YES, SPECIFY

FULL TIME ☒

PART TIME ☐

FEE BASIS ☐

TO BE COMPLETED BY SUPERVISOR

23. POSITION TO WHICH INDIVIDUAL WAS ASSIGNED

24. SIGNATURE OF SUPERVISOR

NAME TYPED OR PRINTED

DATE

DECLARATION OF APPOINTEE

(Data needed for appointment or conversion)

INSTRUCTIONS TO APPOINTEE.—Answer all questions. Your answers will be considered together with other information in your record in determining your present fitness for Federal employment. A false statement or dishonest answer to any question may be grounds for dismissal after appointment or conversion and is punishable by law.

1. NAME (Last—First—Middle) Manning Irene 2. BIRTH DATE Aug 29 1918 3. PLACE OF BIRTH (City and State or city and foreign country) Warrenton, O.

4. PRESENT ADDRESS (Street and number, city, State, and ZIP code)

157 - Sylvia St. West Haven

5. (A) IN CASE OF EMERGENCY, PLEASE NOTIFY

(B) RELATIONSHIP

(C) STREET AND NUMBER, CITY, STATE, AND ZIP CODE

(D) TELEPHONE NO.

Edward Manning

Husband

157 - Sylvia St. West Haven

934-5179

6. DOES THE UNITED STATES GOVERNMENT EMPLOY, IN A CIVILIAN CAPACITY, ANY RELATIVE OF YOURS (EITHER BY BLOOD OR MARRIAGE) WITH WHOM YOU LIVE OR HAVE LIVED WITHIN THE PAST 12 MONTHS? ☐ YES ☒ NO

If "Yes," for each such relative fill in the blank below. If additional space is necessary, complete under Item 14.

NAME	PRESENT ADDRESS (Including ZIP code)	RELATIONSHIP	MAR- RIED (Check one)	SIN- GLE (Check one)	(1) Department or agency in which employed, (2) City and State, ZIP code, (3) Kind of appointment
<u>Raymond Biggs</u>	<u>157 - Sylvia</u>				1. _____ 2. _____ 3. _____
					1. _____ 2. _____ 3. _____
					1. _____ 2. _____ 3. _____

ANSWER BY PLACING "X" IN PROPER COLUMN		YES	NO	ANSWER BY PLACING "X" IN PROPER COLUMN		YES	NO
7. ARE YOU A CITIZEN OF THE UNITED STATES OF AMERICA? If "No," give country of which you are a citizen: _____		☒		11. SINCE YOU FILED APPLICATION FOR THIS EMPLOYMENT, HAVE YOU:			
8. ARE YOU AN OFFICIAL OR EMPLOYEE OF ANY STATE, TERRITORY, COUNTY, OR MUNICIPALITY? If your answer is "Yes," give details in Item 14.			☒	A. BEEN DISCHARGED (FIRED) FROM EMPLOYMENT FOR ANY REASON?			☒
9. DO YOU RECEIVE OR HAVE YOU APPLIED FOR AN ANNUITY FROM THE UNITED STATES OR DISTRICT OF COLUMBIA GOVERNMENT UNDER ANY RETIREMENT ACT OR ANY PENSION OR OTHER COMPENSATION FOR MILITARY OR NAVAL SERVICE? If your answer is "Yes," give details in Item 14.			☒	B. RESIGNED (QUIT) AFTER BEING INFORMED THAT YOUR EMPLOYER INTENDED TO DISCHARGE (FIRE) YOU FOR ANY REASON?			☒
10. SINCE YOU FILED APPLICATION FOR THIS EMPLOYMENT, HAVE YOU:				C. BEEN DISCHARGED FROM THE ARMED SERVICES UNDER OTHER THAN HONORABLE CONDITIONS?			☒
A. BEEN CONVICTED OF AN OFFENSE AGAINST THE LAW OR FORFEITED COLLATERAL, OR ARE YOU NOW UNDER CHARGES FOR ANY OFFENSE AGAINST THE LAW? (You may omit: (1) traffic violations for which you paid a fine of \$30.00 or less; and (2) any offense committed before your 21st birthday which was finally adjudicated in a juvenile court or under a youth offender law.)			☒	If your answer to A, B, or C is "Yes," give details in Item 14. Show the name and address (including ZIP code) of employer, approximate date, and reason in each case.			
B. BEEN CONVICTED BY GENERAL COURT-MARTIAL WHILE IN THE MILITARY SERVICE? If your answer to A or B is "Yes," give details in Item 14. Show for each offense: (1) date, (2) charge, (3) place, (4) court, and (5) action taken.			☒	12. SINCE YOU FILED APPLICATION FOR THIS EMPLOYMENT HAVE YOU BEEN BARRED BY THE U.S. CIVIL SERVICE COMMISSION FROM TAKING EXAMINATIONS OR ACCEPTING CIVIL SERVICE APPOINTMENTS? If your answer is "Yes," give date of and reasons for such debarment in Item 14.			☒
				13. (A) HAVE YOU EVER FILED A WAIVER OF LIFE INSURANCE COVERAGE UNDER THE FEDERAL EMPLOYEES' GROUP LIFE INSURANCE ACT? (B) IF YOUR ANSWER IS "YES," DID YOU CANCEL THE WAIVER?			☒

14. SPACE FOR DETAILED ANSWERS TO OTHER QUESTIONS (Indicate item numbers to which answers apply) (Continue on reverse if necessary)

ITEM NO.	ITEM NO.

CERTIFICATION.—I certify that all of the answers to the questions above are true, complete, and correct to the best of my knowledge and belief and are made in good faith.

Signature of appointee

Irene Manning

Date of signature

APPOINTING OFFICER.—Enter date of appointment or conversion:

(This form is to be completed before entrance on duty under the appointment or conversion.)

STATE OF NEW YORK)

SS:

COUNTY OF NASSAU)

Elizabeth Herbert, being duly sworn, deposes and

says:

Deponent is not a party to the action, is over 18 years of age and resides at Mineola, New York.

On May 3, 1977, deponent served the within appellee's brief upon Thomas Gaines, Jr., 306 Huguenot Street, New Rochelle, New York, and Post, DeMott & Crow, Esqs., 1 Madison Avenue, New York, New York the appellant and Attorneys for Plaintiff in this action, by depositing a true copy of same enclosed in a post-paid properly addressed wrapper, in an official depository under the exclusive care and custody of the United States Postal Service within the State of New York.

Sworn to before me this
3rd day of May, 1977

Elizabeth Herbert
Elizabeth Herbert

Georgia Patrou
GEORGIA PATROU
NOTARY PUBLIC, State of New York
No. 30-4516544
Qualified in Nassau County
Commission Expires March 30, 19.... 78

STATE OF NEW YORK)

SS:

COUNTY OF NASSAU)

Elizabeth Herbert, being duly sworn, deposes and

says:

Deponent is not a party to the action, is over 18 years of age and resides at Mineola, New York.

On May 3, 1977, deponent served the within appellee's brief upon Thomas Gaines, Jr., 306 Huguenot Street, New Rochelle, New York, and Post, DeMott & Crow, Esqs., 1 Madison Avenue, New York, New York the appellant and Attorneys for Plaintiff in this action, by depositing a true copy of same enclosed in a post-paid properly addressed wrapper, in an official depository under the exclusive care and custody of the United States Postal Service within the State of New York.

Sworn to before me this
3rd day of May, 1977

Elizabeth Herbert
Elizabeth Herbert

Georgia Patrou
GEORGIA PATROU
NOTARY PUBLIC, State of New York
No. 30-4516544
Qualified in Nassau County *20*
Commission Expires March 30, 19....